

United States District Court

for

District of Guam

FILED

DISTRICT COURT OF GUAM

OCT 24 2005 *9P*

MARY L.M. MORAN
CLERK OF COURT

**Report for Modifying the Conditions or Term of Supervision
with Consent of the Offender**
(Probation Form 49, Waiver of Hearings is Attached)

Name of Offender: PALACIOS, Michael S.N. Case Number: CR91-00103-001

Name of Sentencing Judicial Officer: James Ware, Designated Judge

Date of Original Sentence: June 3, 1992

Original Offense: Armed Career Offender, in violation of 18 U.S.C. § 922(g)(1) and 924(e)(1)

Original Sentence: 180 months imprisonment followed by five years supervised release with a special assessment fee of \$100. **Conditions modified August 5, 2004**, to include conditions that the defendant participate in drug treatment with urinalysis, participate in mental health treatment, and refrain from any use of alcohol.

Type of Supervision: Supervised Release Date Supervision Commenced: August 22, 2004

PETITIONING THE COURT

☐ To extend the term of supervision for _____ years, for a total term of _____ years.

☒ To modify the conditions of supervision as follows:

1. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed 8 drug tests per month, as directed by the probation officer.

CAUSE

On September 2, 2005, the Ninth Circuit, in United States v. Stephens , No. 04-50170, addressed 18 U.S.C. § 3583(d) supervised release and 18 U.S.C. §3563(a)(5) probation mandatory testing conditions which requires that the district court determine the maximum number of mandatory drug tests. The Ninth Circuit held that because the statute requires the district court to determine the maximum number of drug tests under the mandatory condition, transferring this duty to the probation officer was an improper delegation of Article III judicial power.

To assist the Court in determining the appropriate number of drug tests, the undersigned officer has evaluated the offender's history of drug use, and the drug detection period of his drug of choice. As methamphetamine is the offender's drug of choice and has a normal detection period of four days or less, it is recommended that the maximum number of tests the court order per month be set at eight. This will allow for adequate time intervals between tests which will help facilitate the detection of use. It also provides for enough additional tests so that the pattern of testing will not be predictable to the offender.

To address the implications of United States v. Stephens Ninth Circuit No. 04-50170, it is respectfully requested that the Court modify the defendant's mandatory condition to set the maximum number of tests the defendant must submit. It is therefore recommended that the mandatory condition be modified as follows:

"The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer."

Mr. Palacios is in full compliance with his conditions of supervised release. Although unemployed, he supports his family through farming and various maintenance projects as referred by the Agat Mayor. Mr. Palacios is also in full compliance with his mental health treatment condition and continues to take all prescribed medication. He paid the \$50 special assessment fee on February 11, 1994 and has submitted all monthly supervision reports to date.

Based on the information above, the probation officer respectfully requests that the Court modify the conditions of supervised release, pursuant to 18 U.S.C. § 3583(e)(2) as outlined above. Attached is Probation Form 49, Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision, with Mr. Palacios' consent to the modification.

Reviewed by:


ROSSANNA VILLAGOMEZ-AGUON

U.S. Probation Officer

Supervision Unit Leader

Date: 10/19/05

RECEIVED
OCT 20 2005
DISTRICT COURT OF GUAM
HAGATNA, GUAM

Respectfully submitted,

by: 
ROBERT I. CARREON

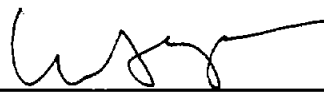
U.S. Probation Officer

Date: 10/19/05

THE COURT ORDERS

- ☐ No Action
- ☐ The Extension of Supervision as Noted Above.
- ☒ The Modification of Conditions as Noted Above.

☐ Other Issuance of a: ☐ Summons ☐ Warrant



WILLIAM ALSUP, Designated District Judge

OCT 24 2005

United States District Court

for

District of Guam


**Waiver of Hearing to Modify Conditions
of Probation/Supervised Release or Extend Term of Supervision**


I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.


I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release or to the proposed extension of my term of supervision:

I agree to the modification of my supervised release conditions to include the following conditions:

1. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed 8 drug tests per month, as directed by the probation officer.

Witness: 
Robert I. Carreon
U.S. Probation Officer

Signed: 
Michael S.N Palacios
Probationer or Supervised Releasee


Date